

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

EDWIN PINEDA BARRIENTOS,

Petitioner,

v.

ROSEMARY NDHO, Warden,

Respondent.

No. 2:20-cv-2234-TLN-EFB P

ORDER

Petitioner, a state prisoner proceeding pro se, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On August 5, 2021, the undersigned issued findings and recommendations recommending that the petition be denied. Those findings and recommendation were served on petitioner and contained a notice to petitioner that any objections were to be filed within fourteen days. After an extension of time, petitioner filed objections to the findings and recommendations. Further, nearly two months after the findings and recommendations were issued, petitioner filed brief motions for leave to amend the petition and to stay the case so that he could exhaust claims not raised in the original petition. ECF Nos. 24, 25. Respondent filed an opposition of less than two pages, arguing that amendment would be futile because the new claims would not be timely and that a stay should not issue because petitioner had not shown good cause for failing to exhaust the claims. ECF No. 26. The opposition used the filing of the motion to amend as the operative date for computing the AEDPA limitations period, however, without addressing the relation-back doctrine. *See Mayle v. Felix*, 545 U.S. 644


1 (2005). These filings raise the question of whether amendment of the petition and a stay of the
2 proceedings while petitioner exhausts state remedies, rather than dismissal, is the appropriate
3 resolution.

4 The court finds that this lackluster briefing by the parties is not sufficient to allow the
5 court to determine the propriety of amendment or stay. Accordingly, while the court stands by its
6 earlier analysis that the claims in contained in the current petition must be dismissed for the
7 reasons stated in the August 5, 2021 findings and recommendation, the court will allow petitioner
8 leave to file a more fully briefed motion for leave to amend the petition, accompanied by a
9 proposed amended petition, within 30 days from the date of service of this order. If the proposed
10 amended petition contains unexhausted claims, petitioner must simultaneously file a motion to
11 stay providing justification therefore. Respondent shall file any opposition to the motion to
12 amend and motion to stay within 30 days of the date of service of petitioner's motions. Petitioner
13 may file a reply within 14 days of respondent's opposition(s).

14 Accordingly, IT IS HEREBY ORDERED that:

- 15 1. The findings and recommendations filed August 5, 2021, are held in abeyance pending
16 further briefing on the questions of amendment and stay;
- 17 2. Petitioner's October 4, 2021 motions for leave to amend the petition and to stay the
18 petition (ECF Nos. 24 & 25) are denied without prejudice;
- 19 3. Petitioner may file a new motion for leave to file an amended petition within 30 days
20 from the date of service of this order, and the subsequent briefing following the filing
21 of any such motion shall proceed in the manner provided by this order; and
- 22 4. Should petitioner fail to file a motion for leave to amend within the 30 days provided
23 in this order, the findings and recommendations filed August 5, 2021 will be
24 submitted to the district judge.

25 DATED: December 9, 2021.

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27 EDMUND F. BRENNAN
28 UNITED STATES MAGISTRATE JUDGE